

**PUBLIC CHAPTER NO. 766**

**SENATE BILL NO. 2935**

**By Stanley, Crowe**

**Substituted for: House Bill No. 2752**

**By Coleman**

AN ACT to amend Tennessee Code Annotated, Title 66, relative to enacting the "Tennessee Condominium Act of 2008".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by denoting §§ 66-27-101 through 66-27-123 thereof as Part 1 of Chapter 27, and by adding the following new sections thereto:

§ 66-27-201. Short Title. Parts 2-5 of this Chapter shall be known and may be cited as the "Tennessee Condominium Act of 2008".

§ 66-27-202. Applicability.

(a) This Act applies to all condominiums created within this State after the effective date of this Act. §§ 66-27-203, 66-27-205, 66-27-206, 66-27-207, 66-27-303, 66-27-304, 66-27-402(a)(1) through (6) and (11) through (16), 66-27-411, 66-27-414(g), 66-27-415, 66-27-417, and 66-27-501, et seq., to the extent necessary in construing any of the above listed sections, apply to all condominiums created in this State before the effective date of this Act; but those sections apply only with respect to events and circumstances occurring after the effective date of this Act and do not invalidate or supersede existing provisions of the master deed, master lease, declaration, bylaws, or plats of those condominiums existing on the effective date of this Act.

(b) The provisions of §§ 66-27-101 through 66-27-123 do not apply to condominiums created after the effective date of this Act and do not invalidate any amendment adopted after the effective date of this Act to the master deed, bylaws, or plats of any condominium created before the effective date of this Act, if the amendment would be permitted by this Act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by §§ 66-27-101, et seq. If the amendment grants to any person any rights, powers, or privileges permitted by this Act, all correlative obligations, liabilities, and restrictions in this Act also apply to that person.

(c) Condominiums existing before the effective date of this Act may elect to be governed by the provisions of this Act in its entirety by amending and restating their then existing master deed, bylaws, and plat or plats in a manner which satisfies the requirements of subsection (b) hereof and any additional requirements applicable to a condominium created under this Act. Condominiums created before the effective date of this Act may elect to be governed by the provisions of this Act by specifically electing to do so in their master deed, master lease, or declaration and by satisfying all requirements applicable to a condominium created under this Act.

(d) This Act does not apply to condominiums or units located outside this State.

§ 66-27-203. Definitions. In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Act:

(1)(A) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant.

(B) A person "controls" a declarant if the person:

(i) Is a general partner, officer, director, manager or managing member, or employer of the declarant;

(ii) Directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant; or

(iii) Controls in any manner the election of a majority of the directors, managers, or managing members of the declarant.

(C) A person "is controlled by" a declarant if the declarant:

(i) Is a general partner, officer, director, manager, managing member or employer of the person;

(ii) Directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person; or

(iii) Controls in any manner the election of a majority of the directors, managers, or managing members of the person.

(D) Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised;

(2) "Allocated Interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit;

(3) "Association" means the unit owners' association organized under § 66-27-401;

(4) "Board of directors" means the body, regardless of name, designated in the declaration to act on behalf of the association;

(5) "Common elements" means all portions of a condominium other than the units;

(6) "Common expenses" means actual or anticipated expenditures made by or financial liabilities of the association, together with any allocations to reserves;

(7) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to § 66-27-307;

(8) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions by the recording of a declaration pursuant to the terms of this Act. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners pursuant to a declaration recorded under this Act or prior law applicable thereto;

(9) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers;

(10) "Declarant" means any person or group of persons acting in concert who:

(A) As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, and files a declaration pursuant to this Act; or

(B) Reserves or succeeds to any special declarant or development right;

(11) "Declaration" means any instruments, however denominated, that create a condominium, and any amendments to those instruments;

(12) "Development rights" means any right or combination of rights reserved by a declarant in the declaration:

(A) To add real estate to a condominium;

(B) To create units, common elements, or limited common elements within a condominium;

(C) To allocate limited common elements (other than those described in §§ 66-27-302 and 66-27-304) to specific units;

(D) To grant licenses for parties who are not unit owners to use portions of the common elements or limited common elements (subject to an obligation to pay an equitable share of the common expenses attributable to such licensed common elements or limited common elements);

(E) To the extent not otherwise permitted as a right held by unit owners as provided in § 66-27-313(a), to subdivide units or convert units into common elements; or

(F) To withdraw real estate from a condominium;

(13) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest;

(14) "Identifying number" means a symbol, name, or address that identifies only one (1) unit in a condominium;

(15) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size;

(16) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 66-27-302(2) or (4) for the exclusive use of one (1) or more but fewer than all of the units;

(17) "Master association" means an organization described in § 66-27-321, whether or not it is also an association described in § 66-27-401;

(18) "Person" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity;

(19) "Purchaser" means any person, other than a declarant, who by means of a contract or voluntary transfer acquires a legal or equitable interest in a unit other than:

(A) A leasehold interest (including renewal options) of less than twenty (20) years; or

(B) As security for an obligation, or in connection with the enforcement thereof;

(20) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(21) "Residential purposes" means use for dwelling or non-commercial recreational purposes, or both;

(22) "Special declarant rights" means rights, reserved for the benefit of a declarant:

(A) To complete improvements indicated on plats and plans filed with the declaration pursuant to § 66-27-309;

(B) To exercise any development right pursuant to § 66-27-310;

(C) To maintain sales offices, management offices, signs advertising the condominium, and models pursuant to § 66-27-315;

(D) To use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium pursuant to § 66-27-316;

(E) To make the condominium part of a larger condominium or a planned community pursuant to § 66-27-323;

(F) To make the condominium subject to a master association pursuant to § 66-27-321;

(G) To appoint or remove any officer of the association or any master association or any member of the board of directors during any period of declarant control pursuant to § 66-27-403(c); or

(H) To exercise any other rights reserved to the declarant in the declaration;

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 66-27-305(a)(4); and

(24) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

§ 66-27-204. Variation by Agreement. Except as expressly provided in this Act, provisions of this Act may not be varied by agreement, and rights conferred by this Act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this Act or the declaration.

§ 66-27-205. Separate Titles and Taxation.

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements.

(c) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

§ 66-27-206. Applicability of Local Ordinances, Regulations, and Building Codes. A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this Act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

§ 66-27-207. Eminent Domain.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for all purposes permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides that a unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective

allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree shall be recorded in every county in which any portion of the condominium is located.

§ 66-27-208. Supplemental General Principles of Law Applicable. The principles of law and equity, including the law of corporations and unincorporated associations and limited liability companies, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this Act, except to the extent inconsistent with this Act.

§ 66-27-209. Construction Against Implicit Repeal. This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be implicitly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 66-27-210. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

§ 66-27-211. Enforcement. In addition to any other remedy provided by the declaration, any right or obligation declared by this Act is enforceable by judicial proceeding. If any person subject to this Act fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case involving willful failure to comply with this Act, or any provision of the declaration or bylaws, may award reasonable attorney's fees.

§ 66-27-301. Creation of Condominium.

(a) A condominium may be created pursuant to this Act only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the Grantee's index in the name of the condominium and the



association and in the Grantor's index in the name of each person executing the declaration. The name and address of the preparer shall appear on the first page thereof, as required by § 66-24-115.

(b) A residential unit that shares a horizontal boundary with another unit, other than a unit which is subject to retained development rights, may not be conveyed to a purchaser until all structural components and mechanical systems of all buildings containing or comprising any such unit are substantially completed.

§ 66-27-302. Unit Boundaries. Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one (1) unit or any portion of the common elements is a part of the common elements;

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§ 66-27-303. Construction and Validity of Declaration and Bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, or the bylaws, rules, or regulations adopted pursuant to § 66-27-402(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Act.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Act. Whether a substantial failure impairs marketability is not affected by this Act.

§ 66-27-304. Description of Units. A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

§ 66-27-305. Contents of Declaration.

(a) The declaration for a condominium must contain:

(1) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the association;

(2) The name of every county in which any part of the condominium is situated;

(3) A legally sufficient description of the real estate included in the condominium, including a recital pursuant to § 66-24-110;

(4) A description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(5) A description of any limited common elements, other than those specified in § 66-27-302(2) and (4), as provided in § 66-27-309(b)(10);

(6) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in § 66-27-302(2) and (4), together with a statement that they may be so allocated;

(7) A description of any development rights and other special declarant rights as defined by § 66-27-203(22), reserved by the declarant, provided that, prior to the exercise of any such rights, no consent or joinder by the holder thereof to the termination of the condominium shall be required;

(8) If any development right may be exercised with respect to different parcels of real estate, a statement to

that effect together with a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right; provided that, if the declaration does not provide that the right must be exercised at a specific time, in a particular order, or with respect to all of such real estate, then such right may be exercised at any time, in any order, or with respect to any portion of such real estate;

(9) Any conditions or limitations under which the rights described in subdivision (7) may be exercised or will lapse;

(10) An allocation to each unit of the allocated interests in the manner described in § 66-27-307;

(11) Any restrictions on use, occupancy, and alienation of the units; and

(12) All matters required by §§ 66-27-306, 66-27-307, 66-27-308, 66-27-309, 66-27-315, 66-27-316, and 66-27-403(c).

(b) The declaration may contain any other matters the declarant deems appropriate.

#### § 66-27-306. Leasehold Condominiums.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size shall be recorded. The declaration for such condominium shall state:

(1) The recording data;

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to acquire the fee simple estate and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant, provided that, the foregoing shall not prohibit the lessor from acquiring the interest of the defaulting owner, subject to the declaration.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with § 66-27-207(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

(e) Unless the lease described in subsection (a) includes covenants for the benefit of unit owners as set forth in subsections (b) and (c), the lessor under such lease must sign the declaration for the limited purpose of affirming that the lease is subject to such covenants.

#### § 66-27-307. Allocation of Common Element Interests, Votes, and Common Expense Liabilities.

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c)(1) The declaration may provide:

(A) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(B) For cumulative voting only for the purpose of electing members of the board of directors; and

(C) For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(2) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this Act, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula or method, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

(f) Any common elements that may be licensed by the declarant pursuant to § 66-27-203(12)(D) shall be described in the declaration. The declaration shall also provide a method of equitably allocating the common expenses attributable to such common elements to the declarant, and assessing such expenses to the declarant or the holder of such rights. The association shall have a lien on such rights to secure payment of such expenses in accordance with § 66-27-415.

#### § 66-27-308. Allocation of Limited Common Elements.

(a)(1) Except for the limited common elements described in § 66-27-302(2) and (4), the declaration shall specify either:

(A) To which unit or units each limited common element is allocated; or

(B) Which common elements or limited common elements may be allocated or licensed by conveyance from the declarant.

(2) That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, and subject to approval by the association, a limited common element may be reallocated by an instrument executed by the unit owners between or among whose units the reallocation is made, and by the association. Such instrument shall be prepared and recorded by the association at the expense of the reallocating unit owners. The instrument shall be recorded in the names of the parties and the condominium.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with § 66-27-305(a)(6). The allocations shall be made by amendments to the declaration.

(d) Any limited common elements that may be licensed by the declarant pursuant to § 66-27-203(12)(D) shall be described in the declaration. The declaration shall also provide a method of equitably allocating the common expenses attributable to such limited common elements to the declarant, and assessing such expenses to the declarant or the holder of such rights. The association shall have a lien on such rights to secure payment of such expenses in accordance with § 66-27-415.

#### § 66-27-309. Plats and Plans.

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and must contain all information required by this section. The plat or plan, or both, can be attached to the declaration and incorporated therein, or it or they may be referenced in the declaration and recorded in a plat book at the appropriate register's office. In either event, the plat(s) or plan(s), or both, shall be deemed acceptable for recording without further action if it or they comply with this section. Each plat or plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) The name and a survey or general schematic map of the entire condominium;

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the

development right to withdraw, and the location of all existing improvements within that real estate;

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the condominium;

(5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(7) The location, with reference to an established datum, floor number, elevation, or other appropriate means of designation of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) The distance between non-contiguous parcels of real estate comprising the condominium; and

(10) Limited common elements, consisting of porches, balconies and patios.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be built or labeled "NEED NOT BE BUILT".

(d) To the extent not shown or projected on the plats or disclosed in the declaration, plans of the units must show or project:

(1) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) Any horizontal unit boundaries, either by floor number, elevation, or other appropriate means of designation, and that unit's identifying number; and

(3) To the extent not disclosed in the declaration, any units in which the declarant has reserved the right to create additional units or common elements pursuant to § 66-27-310(c), identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section must be made and signed in original by an independent, registered surveyor, architect, or engineer, or combination thereof.

#### § 66-27-310. Exercise of Development Rights.

(a) To exercise any development right reserved under § 66-27-305(a)(7), the declarant shall prepare, execute, and record an amendment to the declaration pursuant to § 66-27-317 and comply with § 66-27-309. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by § 66-27-308.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by §§ 66-27-305 or 66-27-306, as the case may be, and the plats and plans include all matters required by § 66-27-309. This provision does not extend any time limit on the exercise of development rights imposed by the declaration.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the



other units as if that unit had been taken by eminent domain pursuant to § 66-27-207.

(2) If the declarant subdivides the unit into two (2) or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, pursuant to § 66-27-305(a)(7), that all or a portion of the real estate is subject to the development right of withdrawal:

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

§ 66-27-311. Alterations of Units. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association; and

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries. The owner of any adjoining unit affected by such removal of partitions or creation of apertures shall have the right to restore the removed partitions to their original condition or to close any apertures created.

§ 66-27-312. Relocation of Boundaries Between Adjoining Units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be

relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment, at the expense of the affected unit owners, that identifies the units involved, states the reallocations, is executed by those unit owners, and by the association to evidence compliance with this paragraph, contains words of conveyance between the affected unit owners, and upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers, at the expense of the applicant owners.

#### § 66-27-313. Subdivision of Units.

(a) In addition to any development rights relating to the subdivision of units that may be reserved to the declarant, if the declaration expressly so permits, a unit owner may subdivide a unit into two (2) or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit, at the expense of the owner of the unit to be subdivided.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

§ 66-27-314. Monuments as Boundaries. The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building. This section does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

§ 66-27-315. Use for Sales Purposes. A declarant may maintain sales offices, management offices, and models in units owned by the declarant. The declarant may maintain sales offices on common elements in the condominium only if the declaration so provides and specifies the

rights of a declarant with regard thereto. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner or holder of a development right to create additional units, the declarant ceases to have any rights with regard thereto or in any personal property owned by the declarant and used in connection therewith, unless it is removed from the condominium after notice from the association specifying a reasonable period for such removal. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. Any rights reserved to the declarant under this section may be exercised by an agent of the declarant. The provisions of this section are subject to the provisions of other state law, and to local ordinances.

§ 66-27-316. Easement Rights. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this Act or reserved in the declaration.

§ 66-27-317. Amendment of Declaration.

(a) Except in cases of amendments that may be executed by a declarant under §§ 66-27-309(f) or 66-27-310; the association under §§ 66-27-207, 66-27-306(d), 66-27-308(c), 66-27-312(a), or 66-27-313; or certain unit owners under §§ 66-27-308(b), 66-27-312(a), 66-27-313(b), or 66-27-318(b), and except as limited by subsections (d) or (e) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this Act, no amendment may change the boundaries of any unit, or the allocated interests of a unit, or prohibit the leasing of any unit, in the absence of the consent of all affected unit owners.

(e) Except to the extent expressly permitted or required by other provisions of this Act, no amendment may increase special declarant rights without the consent of sixty-seven percent (67%) of the votes of the association other than the declarant.

(f) Amendments to the declaration required by this Act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

§ 66-27-318. Termination of Condominium.

(a) Except in the case of a taking of all the units by eminent domain pursuant to § 66-27-207, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, and eighty percent (80%) of those lenders having first mortgage liens on any unit or units to which eighty percent (80%) of the votes in the association are allocated. The declaration may specify a larger percentage in either instance, and may specify that a lender is deemed to approve the termination if notice is sent to the last address of that lender on file with the association or if none, as specified in such lender's first mortgage lien of record, and no objection is received within thirty (30) days thereafter. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement may specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium containing any units which include title to the underlying land as provided in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded

provided otherwise or unless all owners of units to be sold consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Act or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units not including title to the underlying land as described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) are as follows:

(1) Except as provided in subdivision (h)(2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one (1) or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which at least twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements; and

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) If a lien or encumbrance against all or any portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has been released with respect to any unit, then the lien or encumbrance shall be deemed subordinate to the declaration. Notwithstanding the foregoing, foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request and payment of the expense thereof, an amendment excluding the real estate from the condominium.

§ 66-27-319. Rights of Secured Lenders. The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to § 66-27-413.

§ 66-27-320. Obligation to Complete or Restore. The declarant or unit owner(s), as applicable, shall promptly repair and restore, to a condition compatible with the remainder of the condominium, any portion of the condominium affected by the exercise of rights reserved or created by §§ 66-27-310, 66-27-311, 66-27-312, 66-27-313, 66-27-315, and 66-27-316.

§ 66-27-321. Master Associations.

(a) If the declaration for a condominium provides that any of the powers described in § 66-27-402 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) which exercises those or other powers on behalf of one (1) or more condominiums or for the benefit of the unit owners of one (1) or more condominiums, all provisions of this Act applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in § 66-27-401, it may exercise the powers set forth in § 66-27-402(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 66-27-403, 66-27-408, 66-27-409, 66-27-410, and 66-27-412 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this Act.

(e) Notwithstanding the provisions of § 66-27-403(f) with respect to the election of the board of directors of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in § 66-27-401, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the board of directors of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that board of directors;

(2) All members of the board of directors of all condominiums subject to the master association may elect all members of that board of directors;

(3) All unit owners of each condominium subject to the master association may elect specified members of that board of directors; or

(4) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors.

§ 66-27-322. Submission of a Unit to an Additional Declaration.

(a) A unit may be submitted to an additional declaration creating a new condominium if such submittal is permitted by the declaration creating the unit.

(b) The submission of a unit to an additional declaration shall not be deemed a subdivision of a unit under § 66-27-313.

(c) Upon the submittal of a unit to an additional declaration, the following shall apply:

(1) The appurtenant interest of the unit in the common elements shall be allocated to the units created under the additional declaration pursuant to the terms of the additional declaration;

(2) The association under the additional declaration shall pay all assessments due with respect to the unit submitted to an additional declaration and may exercise any of the rights that may be exercised by the owner of such unit;

(3) The lien for assessments in favor of the association created under the original declaration shall not attach to any unit created under an additional declaration if the owner of such unit has paid such unit's share of such assessment to either the association created under the original declaration or to the association created under the additional declaration;

(4) The units created under an additional declaration shall be subject to the terms and conditions of the original declaration, as it may be supplemented by the additional declaration;

(5) Members of the board of directors of the association created under the original declaration may be elected in any of the following ways specified in the original declaration:

(A) All unit owners of units created under the original declaration shall elect all members of



the board of directors and the vote of any unit subject to an additional declaration shall be cast by a representative of the association created under the additional declaration;

(B) The board of directors of any association created under an additional declaration may elect specified members of the board of directors under the original declaration;

(C) Specified members of the board of directors or specified officers of the association created by the additional declaration may be deemed elected as specified members of the board of directors under the original declaration; or

(D) Any other manner provided in the original declaration permitted under the laws applicable to nonprofit corporations.

(d) Any unit created by submitting a unit to an additional declaration may be further submitted to an additional declaration subject to the provisions of this § 66-27-322 if permitted pursuant to all declarations applicable to such unit.

#### § 66-27-323. Merger or Consolidation of Condominiums.

(a) Any two (2) or more condominiums, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

(b) An agreement of two (2) or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium, or such other percentage of votes as may be required by the declarations of each of the merging condominiums. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which they are based or by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

§ 66-27-401. Organization of Unit Owners' Association. A unit owners' association must be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under § 66-27-318, or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or limited liability company or, in the case of a condominium with four (4) or fewer units that is not a master association, the association may be organized as an unincorporated association.

§ 66-27-402. Powers of Unit Owners' Association.

(a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association, even if unincorporated, or if incorporated or a limited liability company even if subsequently dissolved administratively, may:

(1) Adopt and amend bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the condominium;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to § 66-27-412;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements (other than limited common elements described in § 66-27-302(2) and (4)) and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration or the provision of information required by § 66-27-502;

(13) Impose reasonable charges for services rendered in connection with the transfer of a unit;

(14) Provide for the indemnification of its officers and members of its board of directors and maintain directors' and officers' liability insurance;

(15) Assign its right to future income, including the right to receive common expense assessments, but, except for assignments of income to finance common expenses of the association, only to the extent the declaration expressly so provides;

(16) Exercise any other powers conferred by the declaration or bylaws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(18) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant, its agents or contractors, that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

§ 66-27-403. Board of Directors and Officers.

(a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this Act, the board of directors may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise:

(1) If appointed by the declarant, the care required of fiduciaries of the unit owners; or

(2) If elected by the unit owners, ordinary and reasonable care.

(b) The board of directors may not act on behalf of the association to amend the declaration pursuant to § 66-27-317, to terminate the condominium pursuant to § 66-27-318, or to elect members of the board of directors or determine the qualifications, powers and duties, or terms of office of members of the board of directors pursuant to subsection (f), but the board of directors may fill vacancies in its membership for the unexpired portion of any term, and may elect members of the board of directors of a master association as provided in the declaration.

(c)(1) Subject to subsection (d), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(A) One hundred twenty (120) days after conveyance of seventy-five (75) percent of the units which may be created to unit owners other than a declarant; or

(B) Five (5) years after the conveyance of the first unit to a purchaser other than the declarant or, if more than one hundred (100) units may be created in the condominium, then seven (7) years after such first conveyance.

(2) A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period, but in that

event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) Not later than one hundred twenty (120) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one (1) member of the board must be elected by unit owners other than the declarant.

(e) Not later than the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three (3) members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board of directors and officers shall take office upon election.

(f) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

#### § 66-27-404. Transfer of Special Declarant Rights.

(a) No special declarant right as defined by § 66-27-203(22), created or reserved under this Act may be transferred except by an instrument evidencing the transfer recorded in the register's office in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer. Lack of privity does not deprive the association or any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant as defined by § 66-27-203(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor

who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this Act or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the United States Bankruptcy Code, receivership proceedings, or sale by the association pursuant to its declaration, of any units owned by a declarant or other real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant, unless the person acquiring title records an instrument within one hundred twenty (120) days following such foreclosure, in the register's office of every county in which any portion of the condominium lies, disclaiming any or all of such rights.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the United States Bankruptcy Code, receivership proceedings, or sale by the association pursuant to its declaration, of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights; and

(2) All special declarant rights continue in favor of the purchaser unless disclaimed by a recorded instrument within one hundred twenty (120) days following such foreclosure or sale as provided in subsection (c).

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this Act or by the declaration.

(2) A successor to any special declarant right, other than a successor described in subdivisions (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this Act or the declaration:

(A) On a declarant which relate to his exercise or non-exercise of special declarant rights; or

(B) On his transferor, other than:

(i) Misrepresentations by any previous declarant;

(ii) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

(iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the board of directors; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to § 66-27-315, if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide the information required by §§ 66-27-501, et seq., and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention within one hundred twenty (120) days after acquiring title, in an instrument recorded in every county in which any portion of the condominium lies, to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or unit recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the board of directors in accordance with the provisions of § 66-27-403(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant has not or may not exercise special declarant rights under this subsection, he is not

subject to any liability or obligation as a declarant other than liability for his acts and omissions under § 66-27-403(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this Act or the declaration.

§ 66-27-405. Termination of Contracts and Leases of Declarant. If entered into before the board of directors elected by the unit owners pursuant to § 66-27-403(e), takes office, any contract or lease between the association and a declarant or an affiliate of a declarant, unless such contract or lease exercises a development right or a special declarant right, or any other contract or lease which was not disclosed in the declaration or otherwise in writing prior to the first conveyance of a unit to a party other than the declarant, and at the time entered into was unconscionable to the unit owners under the circumstances then prevailing, may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to § 66-27-403(e), takes office upon not less than ninety (90) days notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. This section applies only to condominiums containing units restricted to residential purposes.

§ 66-27-406. Bylaws.

(a) The bylaws of the association must provide for:

(1) The number of members of the board of directors and the titles of the officers of the association;

(2) Election by the board of directors of a president, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing members of the board of directors and officers and filling vacancies;

(4) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and



(6) The method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§ 66-27-407. Upkeep of Condominium.

(a) Except to the extent provided by the declaration, subsection (b), or § 66- 27-413(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access to and through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the cost of the prompt repair thereof, to the extent the same is not covered by property insurance required to be maintained by the declaration.

(b) In addition to the liability that a declarant as a unit owner has under this Act, the declarant alone is liable for all expenses in connection with real estate subject to development rights, to the extent such expenses exceed the benefit derived by the association or the other unit owners therefrom. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

§ 66-27-408. Meetings. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered, sent prepaid by United States mail, by facsimile, electronically, or by other means expressly authorized by the declaration, to the address of each unit or to any other physical or electronic address designated in writing or by electronic means by the unit owner. The notice of any meeting must state the time, place, and method of attendance of or at the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. Notice may be waived in writing signed by all unit owners.

§ 66-27-409. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the board of directors are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

(c) Attendance at a meeting may be in person, by telephone, or by any other means specified in the bylaws. Attendance at a meeting of the association may also be by proxy.

#### § 66-27-410. Voting; Proxies.

(a) If only one (1) of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one (1) of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one (1) of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to proxy duly executed by a unit owner. If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. The duration of a proxy is governed by the Tennessee Nonprofit Corporation Act, including, without limitation, § 48-57-205 or its successor.

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units:

(1) The provisions of subsection (a) and (b) apply to lessees as if they were unit owners;

(2) Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(3) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in § 66-27-408, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

§ 66-27-411. Tort and Contract Liability. Any action alleging a wrong done by the association must be brought against the association and not against any unit owner. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association.

§ 66-27-412. Conveyance or Encumbrance of Common Elements.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association including, during any period of declarant control, eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; and a like percentage vote by the owners of any units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association, provided that, proceeds of a sale of a limited common element shall be reserved for the benefit of the unit(s) to which such limited common element is allocated.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement may specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is voidable, provided that no action challenging the validity of a conveyance or encumbrance made by the association pursuant to this section may be brought more than one (1) year following the conveyance or encumbrance.

(e) A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access to and support of the unit and the remaining common elements and essential services.

(f) A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

#### § 66-27-413. Insurance.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against risks of direct physical loss commonly insured against for similar properties. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the total replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in

any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner, lessee, or member of the owner's or lessee's household, unless it can be shown that the act with intent to cause the loss of such unit owner, lessee, or member of the owner's or lessee's household was the cause of the loss;

(3) No act or omission by any unit owner, unless acting in the capacity of a governing board member of the association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until after notice of the proposed cancellation or non-renewal has been

mailed to the association and to each and any additional insured under the policy at their respective last known addresses, in accordance with the provisions of the "Cancellation of Commercial Risk Insurance Act", § 56-7-1801, et seq., or, if the policy is a policy of "personal risk insurance" as defined in § 56-5-302, then in accordance with the provisions of law governing such insurance.

(h)(1) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

(A) The condominium is terminated;

(B) Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

(C) Eighty percent (80%) of the unit owners, together with eighty percent (80%) of owners of units which are assigned limited common elements which will not be rebuilt, vote not to rebuild.

(2) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced:

(A) The insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium;

(B) The insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and

(C) The remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units.

(3) If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under § 66-27-207(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions

of this subsection, § 66-27-318 governs the distribution of insurance proceeds if the condominium is terminated. The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to non-residential use.

§ 66-27-414. Assessments for Common Expenses.

(a) Until the board of directors makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the board of directors, assessments must be made at least annually, based on a budget adopted at least annually by the board of directors.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 66-27-307(a). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding the maximum effective annual rate of interest as determined by the Department of Financial Institutions.

(c) To the extent permitted by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element may be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the units may be assessed exclusively against the units benefited; and

(3) The costs of insurance may be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association pursuant to § 66-27-416(a) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due

shall be recalculated in accordance with the reallocated common expense liabilities.

(g) With respect to residential units only, notwithstanding any provision to the contrary set forth in the declaration, the board of directors shall have the power at any time to levy assessments to preserve the physical integrity of the condominium or to comply with governmental requirements applicable to the condominium. Such assessments may be in the form of a single assessment or an assessment for reserves to be paid in such installments as shall be determined by the board of directors.

§ 66-27-415. Lien for Assessments.

(a)(1) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action. Notwithstanding the foregoing, the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under §§ 35-5-101, et seq., provided that, the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under such section. Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(A) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or

(B) If to a lienholder, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder may have on file with the association.

(2) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 66-27-402(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b)(1) A lien under this section is prior to all other liens and encumbrances on a unit except:

(A) Liens and encumbrances recorded before the recordation of the declaration;



(B) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) The lien is also prior to the mortgages and deeds of trust described in subdivision (1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 66-27-414(a) which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien. Provided, however, such lien shall not have the priority provided for in the immediately preceding sentence over the mortgages and deeds of trust described in subdivision (b)(1)(B) above in the event that the owner of such unit or the holder of any first mortgage or deed of trust on such unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from such unit became delinquent, to give written notice of such delinquency to the holder of such first mortgage or deed of trust at the address provided by such party. This subsection does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

(c) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering such unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

#### § 66-27-416. Liability for Judgments and Liens.

(a) The liability of a unit owner in an unincorporated association for a judgment against the association shall be limited to the percentage of the judgment equal to the undivided percentage ownership of the unit owner in the common elements.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to § 66-27-412, the holder of that security interest shall exercise its right against the common elements only.

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied, becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association must be indexed in the name of the condominium and the association.

§ 66-27-417. Association Records. The association shall keep financial records sufficiently detailed to enable the association to comply with §§ 66-27-502 and 66-27-503. All financial and other records shall be made reasonably available for examination by any unit owner, the holder

of any mortgage or deed of trust encumbering a unit, and their respective authorized agents.

§ 66-27-418. Association as Trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, either under § 66-27-413 for insurance proceeds, or § 66-27-318 following termination, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 66-27-501. Applicability; Waiver. This part applies only to units restricted to residential purposes, unless expressly made applicable by the declaration.

§ 66-27-502. Responsibility to Provide Information.

(a) The association, upon request from a unit owner, a purchaser, or any lender to either of the foregoing, or their respective authorized agents, shall provide to the requesting party, within ten (10) business days following the date of the association's receipt of such request, the information specified in § 66-27-503, to the extent applicable. It shall be the responsibility of a unit owner to advise a purchaser or lender, upon request, how the association may be contacted. The association will be entitled to charge a reasonable fee for providing such information which, if not paid, may be assessed against the unit whose owner, lender, or purchaser requested such information.

(b) When construction of a condominium is not yet complete, a declarant, prior to the first sale of any interest in a unit to a third-party purchaser, shall upon request, and within ten (10) business days following the date of the declarant's receipt of such request, provide the information specified in § 66-27-503, to the extent applicable and to the extent available, to any purchaser or prospective lender to a purchaser. If any of such information is not available within ten (10) business days following the date of such request, then it shall be provided at least ten (10) business days prior to closing of the sale of such unit.

(c) The party requesting such information shall be entitled to rely on the information provided, unless such party has actual knowledge to the contrary.

(d) Any request to be made or information to be provided under this part shall be provided in writing or by electronic means,

which may include, without limitation, by email or posting to a Web site and providing a link and access to such Web site.

§ 66-27-503. Information to be Provided; General. The information to be provided pursuant to § 66-27-502 shall include the following:

(1) The name and principal address of the declarant (during the period of declarant control only), the association, and the condominium;

(2) A copy of the recorded, or if not recorded then in substantially final form to the extent available, master deed or declaration, bylaws, charter or articles of association of the association, and all amendments of and exhibits to each of the foregoing;

(3) A copy of the current rules and regulations of the association;

(4) The most recent balance sheet, income statement, and approved budget for the association (or, if there has never been an approved budget, then the projected budget). The budget must include, without limitation:

(A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements, and whether or not any study has been done to determine their adequacy, and if a study has been done, where the same will be made available for review and inspection;

(B) A statement of any other reserves;

(C) The projected aggregate annual common expense assessment by category of expenditures for the association;

(D) The projected monthly common expense assessment, or the method of calculating each unit's share of such assessment, for each type of unit;

(E) A description of any indebtedness secured by the common elements or other amenities owned by the association or available for the use of the unit owners; and

(F) A description of any lease affecting the common elements or amenities owned by the association or available for the use of the unit owners;

(5) Minutes of all meetings of the members and/or the board of directors of the association for the twenty-four (24) month period ending on the date of the request;

(6) The current monthly assessment and any special assessment applicable to the unit in question, and the amount of any delinquencies in any assessments applicable to such unit;

(7) Any fees or assessments due as a result of a transfer of the applicable unit;

(8) The amount and nature of any additional fees currently imposed for use by members of the common elements or other amenities;

(9) A statement of the insurance coverage (which may be provided in the form of an appropriate certificate from the insurer) maintained by the association that includes the types of coverage, limits and deductibles of such insurance;

(10) A statement of any unsatisfied judgments and a description of any pending suits against the association;

(11) A description of any pending suits filed by the association, other than for the collection of delinquent assessments;

(12) The total amount of current monthly, annual, or special assessments for all units in the condominium that are more than sixty (60) days past due, as of the most recent available report, but in no event more than ninety (90) days prior to the date of the request; and

(13) Whether the board of directors is still under declarant control and, if so, when that period of control ends.

§ 66-27-504. Declarant Liability. If the declarant prepared or caused to be prepared all or a part of the information required by this part, the declarant may be held liable for any materially false or misleading statement, or for any material omission of any required information, with respect to that portion of the information which the declarant prepared. The declarant shall not be liable for:

(1) Any false or misleading information or for any omission of material fact unless he had actual knowledge of such statement or omission; or, in the exercise of reasonable care, should have known of such statement or omission; or

(2) Following the end of the period of declarant control, failure of the association to provide information under § 66-27-503 that was prepared by the declarant.

§ 66-27-505. Remedies for Noncompliance.

(a) If the association or declarant, as applicable, fails to provide the information required by § 66-27-503 hereof, within the time herein provided, then the association or declarant, as applicable, shall be liable for and shall pay a fine or penalty of two hundred fifty dollars (\$250) to the party on whose behalf the request is made, following the first request therefor, and a fine or penalty of five hundred dollars (\$500) if not supplied within ten (10) business days following the second request therefor, plus all costs, including, without limitation, reasonable attorney's fees incurred in obtaining such information or enforcing the fines and/or penalties herein provided for. In addition, and not in limitation of the foregoing, neither the purchaser nor any unit owned by the purchaser, shall be liable for any past due assessments which would have been disclosed if such information would have been provided within ten (10) business days following the second request therefor, provided that such requesting party had no actual knowledge of the past due assessments at the time the unit was acquired by the purchaser. Such fine and/or penalty shall not be the exclusive remedy of the aggrieved party hereunder, but shall be in addition to all other remedies to which such party shall be entitled at law or in equity, including, without limitation, specific performance.

(b) If at the time of such request the declarant is in control of the association and/or the condominium, then the declarant must provide the information required hereby within ten (10) business days following receipt of a written request therefor, or, if such information is not available at such time, then within ten (10) business days prior to closing. If such information is not provided within such time, then the prospective buyer shall have the right to rescind the contract upon notice to the declarant or, in the buyer's sole discretion, the buyer may extend the closing date until a date which is ten (10) business days following the date upon which the information is provided, and may seek specific performance of this obligation in a court of competent jurisdiction, and shall be entitled to recover all costs and expenses incurred in doing so, including, without limitation, reasonable attorney's fees.

§ 66-27-506. Escrow of Deposits. Any deposit made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this state in an account designated solely for that purpose by a licensed title insurance company or agent thereof, an attorney, a licensed real estate broker, or an independent bonded escrow company, and shall be deposited in an institution whose accounts are insured by a governmental agency or instrumentality, or any other lawful escrow or trust account, until:

(1) Delivered to the declarant at closing;

(2) Delivered to the declarant because of purchaser's default under a contract to purchase the unit;

(3) Refunded to the purchaser;

(4) Interpleaded into a court of appropriate jurisdiction; or

(5) Disbursed pursuant to a final order of a court of appropriate jurisdiction.

§ 66-27-507. Conversion Buildings.

(a) A declarant of a condominium containing conversion buildings, who offers units in such condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion no later than sixty (60) days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than sixty (60) days notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, unlawful conduct, or other breach of a written lease, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

SECTION 2. Tennessee Code Annotated, Section 66-5-210, is amended by adding the following paragraph immediately after the signature elements to the "Certification" contained in paragraph D thereof:

If the property being purchased is a condominium, the Transferee/Buyer is hereby given notice that he or she is entitled, upon request, to receive certain information regarding the administration of the condominium from the developer or the condominium association, as applicable, pursuant to Tennessee Code Annotated, § 66-27-502.

SECTION 3. This act shall take effect January 1, 2009, the public welfare requiring it.

**PASSED: April 3, 2008**



RON RAMSEY  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of April 2008



PHIL BREDESEN, GOVERNOR